

ADVISORY OPINION 1999-011

Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is rendered. KRS 121.135(4).

October 1, 1999

Hon. William H. May, III, Legal Counsel
Patton-Henry for Kentucky Committee
P.O. Box 1371
Frankfort, Kentucky 40602

Dear Mr. May:

This is in response to your September 1, 1999 request for an advisory opinion concerning the disposition of surplus funds by the Patton-Henry for Kentucky Committee. Specifically, you ask whether the Patton-Henry for Kentucky Committee may transfer unexpended funds to the Kentucky Democratic Party under the circumstances presented by your letter. In response to your question, the Registry has considered the application of the following statutes, which control the disposition of unexpended funds from campaign accounts.

KRS 121.180(10) provides, in pertinent part:

Except as provided in KRS 121A.080(6), any unexpended balance of funds not otherwise obligated for the payment of expenses incurred to further a political issue or the candidacy of a person shall, in whole or in part, at the election of the candidate or committee, escheat to the State Treasury, be returned pro rata to all contributors, or, in the case of a partisan candidate, be transferred to the state or county executive committee of the political party of which the candidate is a member except that a candidate, committee, or an official may retain the funds to further the same public issue or to seek election to the same office or may donate the funds to any charitable, nonprofit, or educational institution recognized under Section 501(c)(3) ... (emphasis added).

KRS 121A.080(6) requires that:

A slate of candidates shall establish a separate candidate campaign account for each primary, runoff primary, and regular election in which it participates. The

unexpended balance of contributions and fund transfers in a candidate campaign account of a slate of candidates which remains after all financial obligations of the particular election for which the account is established have been satisfied shall be forwarded to the registry for deposit in the fund when the account is closed ... (emphasis added.)

Gubernatorial slates of candidates must abide by the provisions of KRS Chapter 121, which addresses campaign finance regulation generally, and KRS Chapter 121A, which specifically governs the public financing program. KRS 121A.090 provides that for qualifying slates of candidates that receive election campaign fund transfers, KRS Chapter 121 is applicable to the extent that it does not conflict with KRS Chapter 121A.

The conjunctive language (“contributions and fund transfers”) of KRS 121A.080(6) contemplates circumstances wherein a participating slate of candidates (one which has elected to receive public funds in exchange for limiting its expenditures to 1.8 million dollars, as adjusted by the consumer price index) is also a qualifying slate,¹ as defined by KRS 121A.010(5), which receives transfers from the election campaign fund. Upon receiving public funds, there is no requirement that a qualifying slate of candidates segregate the public funds transferred from contributions made to the campaign account, which results in the commingling of contributions and public fund transfers.

The issue presented by your letter is whether an unexpended balance of contributions in a slate’s candidate campaign account, which did not receive matching public dollars from the election campaign fund, must be forwarded to the Registry for deposit in the election campaign fund. This same issue was raised in previous litigation,² in which the plaintiff contended that the application of KRS 121A.080(6) against a slate that did not receive public funds would amount to a “taking” without just compensation in violation of the Fifth and Fourteenth Amendments to the United States Constitution. In its responsive pleading to the federal district court, the Registry construed the relevant provisions to permit unexpended funds in the campaign account of the plaintiff to be disposed of in accordance with KRS 121.180(10). The court adopted this construction of KRS 121A.080(6).³

¹ A slate of candidates becomes a qualifying slate of candidates, and therefore eligible to receive a transfer from the election campaign fund, only if it has raised the minimum threshold qualifying amount under KRS 121A.060(1) (\$327,514 for the 1999 general election) and has at least one opposing slate of candidates that has also raised the minimum threshold qualifying amount as required under KRS 121A.060(13).

² Gable v. Jones, Civil Action No. 95-12 (E.D. Ky. 1996).

³ “The Court declares that, in order to save KRS 121A.080(6), it will adopt the narrowing construction offered by the Registry and interpret KRS 121A.080(6) to require that only the unexpended balance of

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Although it has agreed to limit its total expenditures, the Patton-Henry slate does not currently qualify to receive a transfer from the election campaign fund; therefore, it does not constitute a qualifying slate of candidates, as defined by KRS 121A.010(5). Further, as explained in KREF Advisory Opinion 1999-008, the Patton-Henry for Kentucky Committee may accept contributions exceeding the maximum threshold amount. Therefore, based upon the Registry's position in Gable v. Patton, supra n. 2-3, and the court's narrowing construction therein, and further provided that the Patton-Henry for Kentucky Committee does not become a qualifying slate of candidates under KRS 121A.010(5), entitling it to receive matching public funds from the election campaign fund, the committee may dispose of any unexpended contributions in accordance with KRS 121.180(10).

This advisory opinion represents the Registry's consideration of the circumstances presented in your letter. If you have any further questions, please do not hesitate to contact the Registry's staff.

Sincerely,

Rosemary F. Center
General Counsel

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contributions and fund transfers in a candidate campaign account of a Participating Slate be forwarded to the Registry for deposit in the fund when the campaign account if [sic] closed." Id. (partial declaratory judgment and order dismissing plaintiff's third (III) and fourteenth (XIV) causes of action) (emphasis added).